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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ELVIN OMAR AGUILAR,

Defendant and Appellant.

H034624

(Santa Cruz County
Super. Ct. No. F16120)

Defendant Elvin Omar Aguilar's appeal follows denial of his motions to quash or traverse the search warrant and suppress evidence, and his plea of guilty to murder. (Pen. Code, §§ 1538.5, 187, subd. (a).) On appeal, defendant contends that the trial court erred in denying his motions because probable cause did not support issuance of the warrant, and material misstatements and omissions in the affidavit preclude this court's reliance on the good faith exception of *United States v. Leon* (1984) 468 U.S. 897 to uphold the warrant's validity. We will affirm.

STATEMENT OF THE CASE

Following a preliminary hearing, an information was filed in Santa Cruz County charging Elvin Omar Aguilar with the murder of Fatima Raquel Fernandez. Defendant subsequently filed a motion to suppress all tangible or intangible evidence obtained as the result of any illegal arrest, search or seizure, including statements, observations of the

police officers, all items seized, and DNA swabs. The motion was denied on November 3, 2008. On May 21, 2009, defendant pleaded guilty to murder as charged in the information. He was sentenced on July 8, 2009, to 15 years to life in state prison. Defendant timely appealed.

STATEMENT OF FACTS¹

Discovery of the Body

On March 18, 2006, deputies with the Santa Cruz County Sheriff's Office (SCSO) discovered the burned remains of a young female behind a dumpster in the parking lot of Greyhound Rock County Park in Santa Cruz. The victim's body had sustained puncture wounds to the neck and chest. The body was wrapped in a comforter, which "appeared to have been doused with gasoline." Field-testing of the comforter by arson investigators yielded a "presumptive positive result for flammable liquid." Between the victim's legs, near the vaginal area, officers discovered a "melted plastic Kingsford charcoal lighter fluid container." At the scene, officers also recovered a melted gas can spout, a burned medallion necklace, and black latex gloves.

SCSO Detective Henry Montes noticed that a Chevron station located near Half Moon Bay sold gas cans with nozzles similar to the one found with the body. The attendant told Montes that he sold a gas can and gas to a male purchaser on the evening before the body was discovered. The attendant described the customer as a "white male about 35 years old with a mustache" wearing "a tan colored, thick jacket and a tan colored beanie type cap." Later in the investigation, the attendant contacted police

¹ The historical facts summarized above are drawn from the Preliminary Examination held March 24, 2008, Santa Cruz County Sheriff's Detective Joe Ramsey's affidavit, which was appended to defendant's motion to suppress, and other reports appended to the motion as exhibits.

stating that he had just seen the gas can purchaser again. The person was identified as a UPS driver, Arne Harrison Brown.

Forensic Evidence

An autopsy, conducted on March 20, 2006, revealed that the victim's death was a homicide resulting from a "stab wound to her chest." The doctor found semen inside the victim's vagina and collected it with vaginal swabs. The Department of Justice (DOJ) crime laboratory identified the victim's DNA profile. DOJ also identified the DNA profile of a male contributor based on the vaginal swabs. DNA collected from the black latex gloves matched the DNA of the unknown male profile identified through the vaginal swab. Blood stains on the gloves matched the DNA profile of the victim.²

The black gloves were also laboratory-tested for ignitable fluids. In the search warrant affidavit, Detective Ramsey stated that the laboratory's examination of the gloves for ignitable fluids "resulted in a finding of similar flammable liquids to that of the Greyhound Rock crime scene."

In an effort to identify the victim, authorities ran the victim's fingerprints through an automated data base but found no matches. Police posted fliers in targeted areas to generate leads in identifying the victim.

The Missing Person Report

Nineteen months later, Julia Vargas contacted the San Bruno police and reported her niece, Fatima Fernandez, as missing. She reported that Fernandez was last heard from in January 2006 when she spoke via telephone to an aunt, Pina Fernandez (Pina), who was living in Nicaragua at the time. During the January 2006 conversation with Pina, Fernandez stated that she had just been released from the hospital where she had been treated for injuries sustained in a domestic dispute with her boyfriend, Elvin

² The autopsy report also included the information that Fernandez suffered from cirrhosis of the liver, which could have been caused by alcohol abuse or antidepressants.

Aguilar. Fernandez also stated that she was living on the streets of South San Francisco because Aguilar had kicked her out of their home. Vargas had not been aware that Fernandez was missing until she had spoken to Pina on the phone one month earlier. No one in the family had heard from Fernandez since the January 2006 phone call to Pina. Vargas told police that she was concerned about Fernandez because there had been “several unreported domestic violence incidents between Fernandez and Aguilar.” Vargas also reported that Fernandez and Aguilar had a three-year-old daughter (Daughter) together. San Bruno police confirmed Vargas’ information in a translator-assisted phone call to Pina.

Defendant’s False Statements

On November 11, 2007, after officers left a note at Aguilar’s listed address, he contacted the San Bruno police and spoke with Officer Shimek. Aguilar told Shimek that Fernandez had moved back to Nicaragua. On November 12, 2007, San Bruno Police Officer Noakes interviewed Aguilar in his home. Aguilar told Noakes that he last saw Fernandez in April 2006 after they broke up and she moved out of the apartment they shared. Aguilar stated that Fernandez moved in with an “unknown boyfriend.” Aguilar also stated that Fernandez moved to Jalisco, Mexico in August 2006 and that he last spoke to her in January 2007 by telephone. Aguilar said that when he spoke with Fernandez, it was in secret from her new boyfriend. Aguilar likewise stated that he did not have a way of getting in touch with Fernandez.

In regards to the domestic violence reported by Vargas, Aguilar stated that he had “opened a door striking Fernandez but . . . she was uninjured and did not go to the hospital.”³

³ A police report dated May 23, 2004, documents a domestic dispute between Aguilar and Fernandez. The report states that Fernandez scratched Aguilar’s face inadvertently while attempting to take the telephone from Aguilar, who was calling police to have Fernandez removed from their home. The police report also stated that

Aguilar also told Noakes that he did not ask Fernandez to leave their home, that she left on her own “leaving their daughter with [Aguilar] to live in the United States.” Aguilar reported that the reason Fernandez had not contacted her family in so long was because of some “financial disagreements.”

Because Aguilar’s Daughter was not with him at the time of the conversation, Noakes requested that Aguilar bring her to the San Bruno Police Department for a welfare check. Aguilar brought Daughter to the station on November 12, 2007. With Aguilar’s consent, officers collected a cheek swab from Daughter and obtained some personal history from Aguilar regarding him and Fernandez.

Detective Ramsey (the search warrant affiant) compared pictures of Fernandez to the composite drawing of the Greyhound Rock Park victim and determined that there was a “strong similarity.” On November, 14, 2007, SCSO Sergeant Sulay obtained from the San Bruno Police Department a copy of Fernandez’s Nicaraguan identification card, which contained her fingerprint on the back of the card, and submitted the print to Crime Scene Investigation (CSI). On November 15, 2007, CSI determined that Fernandez was the Greyhound Rock Park victim.

On November 14, 2007, Detective Ramsey also ascertained that Aguilar’s place of employment was a Shell gas station in San Francisco. That same day, former SCSO Detective Montes, now an inspector with the Santa Cruz County District Attorney’s Office, spoke to Fernandez’s uncle, William Fernandez (William). William confirmed that Aguilar’s residence is the residence he shared with Fernandez. William told Montes that he had last seen Fernandez on March 7, 2006.⁴ William remembered the date of

Aguilar told officers that he and Fernandez had “physical altercations in the past, but police [were] not called.”

⁴ William initially told the inspector that he last saw Fernandez on March 7, 2005. Inspector Montes suspected that William actually meant March 2006 because it was in March 2006 that Fernandez’s body was found. Based on William’s estimate that Daughter was just over a year old when William last saw Fernandez, Montes suggested

March 7, 2006, specifically because Fernandez and Aguilar invited him to their home to celebrate William's birthday, which is March 14, on the Sunday after his birthday.

William told Inspector Montes that when he arrived for the birthday celebration on the Sunday after his birthday, March 19, no one was home. He was subsequently unsuccessful in attempting to get in touch with Fernandez for the next six weeks. Approximately six weeks after the scheduled birthday celebration, Aguilar came to William's home to drop Daughter off. Aguilar told William that Fernandez had moved in with a new boyfriend in Mexico. Aguilar then asked William to take care of Daughter while Aguilar went to Mexico to "retrieve Fernandez." William stated that he nonetheless continued seeing Aguilar around town and did not believe that Aguilar ever went to Mexico.

The Search Warrant and Affidavit

On November 16, 2007, Detective Ramsey requested a search warrant authorizing the search of Aguilar's person and home. In his affidavit in support of the search warrant, Ramsey stated that he had nine years of experience with the County of Santa Cruz Sheriff's Office. His responsibilities included investigation of all homicide, robbery, and serious assault cases in the county. Ramsey was specially trained in "interview and interrogation, report writing, DNA evidence collection, and homicide investigation." He had participated in 13 homicide investigations, many of which had "led to the arrest and conviction of suspects."

With the exception of the information contained in footnotes 2, and 3, *infra*, Detective Ramsey's affidavit included all of the information about the investigation into the disappearance and death of Fatima Fernandez that we have summarized above. Detective Ramsey also stated his belief that that Aguilar "was involved in the murder of

that William was referring to March 2006. William then corrected himself and stated that he last saw Fernandez in March 2006.

Fernandez.” He cited several factors supporting that belief, including (1) Fernandez’s disappearance and identification as the Greyhound Rock Park homicide victim; (2) Aguilar’s domestic relationship with Fernandez; (3) the history of domestic violence between Aguilar and Fernandez; (4) Aguilar’s false statements to police; and (5) statements Aguilar made to William Fernandez.

Ramsey likewise stated that he believed Aguilar “concoct[ed] the story of Fernandez [leaving] the country” in order to “divert attention away from [her] disappearance [and] avoid investigation by law enforcement.” Based on the lack of blood evidence found at the scene of the body, Ramsey believed that Aguilar killed Fernandez at a “location other than where she was found, and transported her to [Greyhound Rock Park].”

Based on his training and experience, Ramsey knew that laboratory analysis of biological evidence, such as DNA, could identify or eliminate a suspect in an investigation. He stated that collecting a DNA sample from Aguilar (by buccal swab of the inside cheek) would either confirm or eliminate Aguilar as the contributor of the DNA on the vaginal swab taken from Fernandez’s body and the latex gloves recovered at the scene. A match would confirm Ramsey’s belief, based on the other factors, that Aguilar was involved in Fernandez’s murder.

Ramsey believed that biological evidence would be found at Aguilar’s residence. Based on his training and experience, Ramsey knew that biological evidence could be “recovered through scientific methods for several years following a crime.” He also knew that traces of biological evidence can be recovered despite the suspect’s cleaning efforts and even carpet removal. Because puncture wounds such as those found on Fernandez’s body “will bleed,” he knew that blood could have permeated “the furniture fabric, flooring, and floor wall junctions” of Aguilar’s apartment. Thus, although Aguilar may have used chemicals to remove visible biological evidence, and time had passed, Ramsey believed biological evidence would still be found there.

Ramsey stated that he knew from experience that bedding is often purchased as a set, and therefore believed that a search of Aguilar's residence would find bedding matching the comforter in which Fernandez was found wrapped. Because he knew that bedding was often kept in incomplete sets to be used for spare bedding, as needed, he believed that bedding matching the comforter found with Fernandez would still be located in Aguilar's residence. Ramsey also believed that photographs, undeveloped film, or video recordings in Aguilar's home might depict, as a backdrop, bedding that matched the comforter found with Fernandez. Ramsey's belief was based on his knowledge and experience that people tend to keep photographs, video recordings in print and digital form, and even undeveloped rolls of film for long periods of time to document their lives. He also knew from training and experience that such depictions "could assist in showing the comforter used to cover the victim did come from Aguilar's residence."

Based on his training and experience, Ramsey knew that people keep paperwork such as identification cards, birth certificates and immigration papers in their homes, because people often need them for employment, benefits, and medical treatment applications. Based on the fact that Fernandez had been murdered, and that Aguilar had therefore lied to police about Fernandez voluntarily moving to Mexico, Ramsey believed that police would find Fernandez's personal paper work, including her identification cards and immigration papers, at her last known place of residence: Aguilar's residence on Maple Avenue in South San Francisco. He also believed, based on his experience and training, that police would find items of sentimental value to Fernandez, such as photographs of children, family or herself, at her last known address. Finding these items would also help in showing that Fernandez did not leave the country voluntarily as Aguilar stated.

Ramsey knew that Aguilar was employed by a gas station. He also knew, based on his training and experience, that people who work at gas stations often have access to

latex gloves, and that disposable latex gloves are purchased in bulk and kept in a box. DNA from the black latex gloves found at the scene of the body matched the DNA profile as well as the semen inside Fernandez. Ramsey believed that similar gloves would be found at Aguilar's residence.

Based on the other evidence developed during the investigation that linked Aguilar to the crime, Ramsey believed that the person who purchased a gas can with a compression nozzle similar to the one found at the crime scene, from a gas station clerk in Half Moon Bay, was actually Aguilar, and not the UPS driver identified by the gas station clerk as the purchaser. He also knew from experience that people who own winter clothing keep such clothes for several seasons. He therefore believed that a search of Aguilar's residence would find a tan winter jacket and beanie cap fitting the description provided by the gas station attendant. Based on his training and experience, Ramsey also knew that people often keep parts of containers to use for other purposes once lids are lost or damaged. He therefore believed that the portable gas container would be found at Aguilar's house despite the fact that the cap was left at the scene.

A search warrant for Aguilar and Aguilar's residence was issued November 16, 2007. Aguilar was transported to the San Bruno Police Department and interviewed by Sergeant Sulay and Inspector Montes. During the course of the interview, officers informed Aguilar that they were investigating Fernandez's death and that he was responsible for the murder. Aguilar subsequently confessed that he stabbed and killed Fernandez during an argument, that he transported the body, and that he burned the body.

The Motion to Suppress

Pursuant to Penal Code section 1538.5, Aguilar filed a motion to suppress all evidence obtained as the result of an illegal arrest, search and seizure. The motion alleged that the affidavit contained material omissions and misstatements, including the following: (1) the affidavit did not explain "until thirty five paragraphs later, embedded

in the middle of a paragraph,” that the gas station employee in Half Moon Bay identified someone other than Aguilar as the purchaser; (2) the affidavit also omitted the employee’s original description of the purchaser as having blue or green colored eyes, whereas Aguilar’s DMV information stated that Aguilar had brown eyes; (3) the affidavit stated that laboratory examination of the black latex gloves “resulted in a finding of similar flammable liquids to that of the Greyhound Rock crime scene,” whereas the laboratory report stated that “[t]est results on the gloves exhibit some similarities to ignitable liquids, but the results are inconclusive”; (4) the affidavit omitted the fact that the autopsy report found evidence that Fernandez suffered from cirrhosis of the liver either from alcohol abuse or from antidepressants; (5) the affidavit does not give enough detail about the incidents of domestic violence alleged by members of the victim’s family, and omits mentioning that the victim was the documented perpetrator of domestic violence against Aguilar in 2004; and finally (6) the affidavit neglected to mention that William Fernandez at first stated that he had last seen the victim in March 2005 before correcting himself upon further discussion with the police and stating that it was actually March 2006. “Because of this, the search warrant must be traversed, re-weighed and quashed because it states insufficient evidence to search the defendant’s person and his home.”

With respect to the quashing of the warrant, the motion argued that the affidavit did not establish probable cause to believe that the evidence would be found at defendant’s residence because it was stale, the statements indicating consciousness of guilt were not sufficient in themselves to establish guilt, once the “demonstrably untrue information” is excised, the remaining facts in the affidavit do not tie Aguilar or his home “to any part of the crime scene evidence,” and the “obvious effort used to pad this warrant with disjointed details which are never tied to Mr. Aguilar demonstrates that the police knew from the outset that this warrant was insufficient.” Therefore, the affidavit

was so lacking in indications of probable cause that no reasonably well-trained officer would have relied upon it.

The Trial Court's Ruling

A hearing on the motion was held on November 3, 2008. The court assumed, for the purposes of its ruling, that the affidavit contained the misstatements and omissions pointed out by defendant, but ruled that “[o]nce I know, which is uncontroverted in the warrant and in the motion, that Mr. Aguilar is in what I entitle a common law relationship with the deceased, they have a child together, and it doesn’t require looking at the quality of their relationship, it’s just that the relationship exists, and he reports to two witnesses, one law enforcement and an acquaintance I assume, that he’s had communications, conversations with the deceased on several occasions well after the date of her death, that is enough to justify the issuance of the search warrant based upon that information competently set forth in the affidavit . . . I throw everything else out and I’m still . . . going to sign the search warrant, literally throw everything else out.” Accordingly, the court denied the motion to suppress.

DISCUSSION

Contentions

On appeal, defendant renews his argument that the fruits of the search warrant must be suppressed. He concedes that “under one view. . . , his statements alone provide probable cause” for his arrest. However, he argues that the facts alleged in the affidavit were insufficient to provide probable cause to believe that evidence linking him to Fernandez’s murder would be found at his residence, 20 months after Fernandez’s unidentified body was found. He further argues that because the court below impliedly found that the affidavit contained intentional, material misstatements and omissions, this court is precluded from relying on the good faith exception of *Leon* to save the search.

For the reasons we discuss below, we find that the search was amply supported by probable cause to believe that evidence linking defendant to Fernandez' murder would be found in the apartment he shared with her and their child prior to her disappearance. Because we find no lack of probable cause, we need not and do not apply *Leon* to this search warrant.

Applicable Legal Principles

Probable Cause to Search

The Fourth Amendment to the federal Constitution provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause.” Probable cause exists “where an officer is aware of facts that would lead a man of ordinary caution or prudence to believe, and conscientiously to entertain, a strong suspicion that the object of the search is in the particular place to be searched.” (*Wimberly v. Superior Court* (1976) 16 Cal.3d 557, 564.) In this context, probable cause “is a fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules.” (*Illinois v. Gates* (1983) 462 U.S. 213, 232 (*Gates*).) “[P]robable cause requires only a . . . substantial chance.” (*Id.* at p. 243, fn. 13.)

In issuing a search warrant, there must be a “fair probability that contraband or evidence will be found in a particular place.” (*Gates, supra*, 462 U.S. at p. 238.) The existence or nonexistence of probable cause is assessed by applying a “totality-of-the-circumstances” test, which entails consideration of “the whole picture.” (*United States v. Cortez* (1981) 449 U.S. 411, 417.) Given a set of facts, trained officers are permitted to draw “common-sense conclusions” that are based not on certainties, but on probabilities. (*Id.* at p. 231.)

The Magistrate's Role

“The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, including the ‘veracity’ and ‘basis of knowledge’ of persons supplying hearsay information, there is a *fair probability* that contraband or evidence of a crime will be found in a particular place.” (*Gates, supra*, 462 U.S. at p. 238, italics added.) To accomplish this task, the magistrate may consider the views and opinions of an experienced officer. (*People v. Tuadles* (1992) 7 Cal.App.4th 1777, 1784 (*Tuadles*).)

The Reviewing Court's Role

In contrast, because “ ‘the magistrate acts as a trier of fact in appraising and weighing the affidavit [citation],’ . . . [his or her] ‘ “determination of probable cause should be paid great deference by reviewing courts.” ’ ” (. . . *Gates, supra*, 462 U.S. at p. 236.) . . . [¶] . . . [¶] In reviewing the issuance of a search warrant ‘[a]ll we are . . . asked to decide is whether the [magistrate] acted properly, not whether [the police officer] did.’ [Citations.] Our determination is *not* based upon a de novo review. [Citations.] [¶] Our task, as a reviewing court, is to determine whether ‘the magistrate had a “substantial basis for . . . conclud[ing]” that a search warrant would uncover evidence of wrongdoing.’ [Citation.] ‘ “[A]ll conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged to uphold the findings of the [magistrate] if possible.” ’ [Citation.] Moreover, doubtful or marginal cases should be resolved in favor of upholding the warrant.” (*Tuadles, supra*, 7 Cal.App.4th at pp. 1782-1784.)

The Warrant Was Supported By Probable Cause

Defendant argues that the affidavit was defective in that it failed to allege any specific facts to support the inference that the homicide occurred at his home. He

likewise argues that the search warrant affidavit offers no basis beyond “training and experience” to support its conclusions that a search would uncover (1) DNA evidence consistent with the body and black latex gloves; (2) bedding and photographs of bedding consistent with the comforter found covering Fernandez’s body; (3) the gas can matching the lid at the scene; (4) Fernandez’s identification cards and mementos; and (5) winter clothing consistent with the description of the gas can purchaser.

Although defendant does not specifically challenge the trial court’s ruling on his motion to traverse, he does argue that because the magistrate was misled by material misstatements and omissions in the warrant, the *Leon* good faith exception is unavailing. Specifically, defendant complains that Detective Ramsey’s affidavit misled the magistrate by imprecisely stating that the black latex gloves contained “ ‘similar flammable liquid to that of the Greyhound Rock crime scene.’ ” He points out that the DOJ Forensic Services report actually stated that test results “ ‘exhibit some similarities to ignitable fluids, but the results are inconclusive.’ ” In addition, defendant argues that the affidavit was misleading because Detective Ramsey’s conclusion that Aguilar was the gas can purchaser appears 35 paragraphs after the gas station attendant’s identification of a UPS driver as the gas can purchaser. Finally, he complains that the magistrate was unable to consider that William Fernandez at first stated that he believed he last saw his niece in March 2005.

Initially we note, and defendant concedes, that before any search was conducted, the police had reason to believe that defendant was the prime suspect in Fernandez’s death. “[F]alse exculpatory statements by a suspect can provide probable cause to arrest” because they “ ‘cogently evidence consciousness of guilt and suggest that there is no honest explanation for incriminating circumstances.’ ” (*People v. Carillo* (1995) 37 Cal.App.4th 1662, 1670.) Here, defendant’s false statements to police established probable cause. He falsely told police that he spoke with Fernandez several times after her body was discovered. He elaborated by providing that Fernandez moved away with

another boyfriend but still phoned Aguilar in secret. Thus, applying the reasoning of *Carrillo*, the magistrate could reasonably conclude that defendant concocted the story to draw attention away from Fernandez's disappearance.

Probable cause to arrest defendant was further grounded in the fact of defendant's familial relationship with Fernandez. As the trial court noted, the reasonableness of the magistrate's belief in defendant's involvement in Fernandez's death did not depend on the volatility of their relationship, merely the fact of it.

Defendant argues, however, that the right to arrest is not synonymous with the right to search. (*Zurcher v. Stanford Daily* (1978) 436 U.S. 547, 556.) Thus "[t]he critical element in a reasonable search is . . . that there is reasonable cause to believe that the specific 'things' to be searched for and seized are located on the property to which entry is sought." (*Ibid.*) He argues that because the body was discovered in Santa Cruz, 63 miles from defendant's South San Francisco home, the facts presented in the affidavit did not establish probable cause to believe that the items sought would be found in defendant's apartment. We disagree.

First, officers confirmed that Aguilar's residence was the same home in which he had lived with Fernandez and Daughter. Thus, the affidavit showed that prior to her disappearance, Fernandez and defendant lived in a familial relationship in the very apartment that defendant continued to occupy after her disappearance and up to the time it was searched. There was semen in Fernandez's vagina. Furthermore, Fernandez' body was found wrapped in a gasoline-doused comforter, and she died of puncture wounds, which caused bleeding. However, Detective Ramsey noted that there was a paucity of blood at the scene. Taken together, these facts tended to show that a marriage-like relationship existed between defendant and Fernandez; that she was wrapped in a covering normally found on a bed; that she died of wounds that produced blood, but the spot in which she was found was not particularly bloody; and that she had engaged in intercourse around the time of her death.

In our view, the magistrate was entitled to infer from the totality of these circumstances that Fernandez had probably died at home – that is, at the apartment she shared with defendant and Daughter – and that her body had been moved to a park far away from that home in order to misdirect the police investigation that was sure to follow the discovery of the body. These inferences, in turn, support a fair probability that biological and other physical evidence would be found in the home where she was killed.

However, defendant next argues that the information in the affidavit was stale, in that none of the facts supported a reason to believe that, some 20 months after the discovery of Fernandez' body, "any item that may have been evidence of [Fernandez's] death such as gloves, clothes, or gas container, would still be on the premises." Again, we disagree.

"Probable cause is not determined by merely counting the number of days between the time of the facts relied upon and the search warrant's issuance." (*United States v. Brinklow* (10th Cir. 1977) 560 F.2d 1003, 1005.) Rather, whether evidence is stale "depends more on the nature of the unlawful activity alleged in the affidavit than the dates and times specified therein." (*United States v. Harris* (3d Cir. 1973) 482 F.2d 1115, 1119.) In this case, Detective Ramsey stated in his affidavit that he knew from his experience and training that biological evidence "can be located and recovered through scientific methods *for several years* following a crime." (Italics added.) Through his training and experience, he also knew that traces of biological evidence could be recovered despite chemical cleaning or even rug removal. Thus, the affidavit provided ample facts from which the magistrate could infer that biological evidence of the crime would still be present in the apartment if she had been killed there which, as we have noted above, was probable.

The affidavit also stated that officers were likely to find Fernandez's effects, such as immigration papers and photographs. The rationale provided in the affidavit was that if Fernandez had moved to Mexico, she would have likely taken these items with her.

However, since defendant had lied about talking to Fernandez when in fact she was already dead, it was likely the immigration papers would still be found in her home. The affiant reasoned that discovery of these items in the apartment would prove that Aguilar concocted the story about Fernandez moving to Mexico.

In addition, the affidavit stated that officers were likely to find bedding, black latex gloves, and a gas can to match the comforter, black latex gloves and gas cap found with Fernandez's body. The affiant stated that from his training and experience, he knew that people tend to keep mismatched bedding as spares, and find other uses for plastic containers such as gas cans. He therefore suggests that both items could likely be found in Aguilar's home. He likewise posited that because of defendant's job at a gas station, he would be likely to have access to black latex gloves in bulk form, and to keep a box of them at his home. Finally, the affidavit informed the magistrate that, inasmuch as defendant was the prime suspect in the killing, the affiant also believed he was the probable purchaser of the gas can in Half Moon Bay, and that the gas station attendant had misidentified the UPS employee as that person. Thus, he reasoned that officers would find in defendant's home a tan beanie and other winter clothing matching the gas can purchaser's description, because he knew that people keep winter clothing for several seasons. Discovery of these items would also provide strong corroboration of defendant's involvement in Fernandez's murder.

The warrant affidavit stated with particularity each item for which the police were searching, and included Detective Ramsey's rationale as to why each item was likely to be present in defendant's apartment. Based on the facts stated in the affidavit, and the reasonable inferences to be drawn from them, the magistrate was entitled to conclude that biological and other physical evidence would probably be found in the home Fernandez had shared with defendant prior to her death.

To the extent defendant argues that Detective Ramsey's statements should have been disregarded by the magistrate as lacking any factual basis beyond his training and

experience, his argument is unavailing. An affiant's training and experience are relevant factors in determining probable cause. "[Probable cause] may be based not only upon the circumstances and conduct recited in the affidavit but also upon the affiant's interpretation of and opinion about those circumstances and conduct." (*Tuadles, supra*, 7 Cal.App.4th at p. 1784.) Here, Detective Ramsey had nine years' experience with the Santa Cruz County Sheriff's Department, had specialized training in DNA evidence collection and other matters, and had been involved in 13 homicide investigations, many of which had lead to convictions. Thus, Detective Ramsey "had extensive . . . training and experience and 'the magistrate could legitimately consider [his opinions] in determining probable cause for the search.' " (*Tuadles*, at p. 1784; *United States v. Cortez, supra*, 449 U.S. at p. 418 ["a trained officer draws inferences and makes deductions . . . that might well elude an untrained person"].) Accordingly, we find that Detective Ramsey's experience and training were highly relevant to the magistrate's determination and supportive of the evidentiary conclusions presented in the affidavit.

In summary, we hold that the totality of the circumstances firmly established probable cause to search Aguilar's apartment. Our conclusion does not depend on any of the omissions or misstatements alleged by defendant, or upon any reports of domestic violence. Defendant's relationship to Fernandez and his false statements to police and others gave rise to the reasonable belief that defendant was involved in Fernandez' death. In our view, based on the facts presented in the affidavit that we discuss in this opinion, the magistrate could reasonably find probable cause to believe that biological and other physical evidence of defendant's involvement in Fernandez' killing would be found in the apartment in which defendant still resided and had shared with Fernandez. Furthermore, the affidavit clearly stated the items for which police were searching, and

the underlying rationale for the belief that each item would still be present 20 months later. The motion to suppress was properly denied.⁵

CONCLUSION

Under the totality of the circumstances, probable cause supports the magistrate's issuance of the warrant to search defendant's apartment for evidence relating to the killing of Fatima Fernandez.

DISPOSITION

The judgment is affirmed.

McAdams, J.

WE CONCUR:

Bamattre-Manoukian, Acting P.J.

Mihara, J.

⁵ Inasmuch as we find that probable cause to search existed, we do not address defendant's *Leon* claim.